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APPL FOR FNU  
SENT TO JUDGE  
4/24/03

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

11 LUIS ALBERTO GALVIS MUJICA,  
on behalf of himself and  
12 as representative of the Estates  
of TEREZA MUJICA HERNANDEZ and  
13 EDILMA LEAL PACHECO and JOHANNY  
HERNANDEZ BECERRA.

14 Plaintiff,

15 v.

16  
17 OCCIDENTAL PETROLEUM, and  
CORPORATION, AIRSCAN, INC.

18 AND

19 Defendants.

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Schonbrun DeSimone Selpow  
Harris & Hoffman LLP  
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Venice, CA 90291  
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Case No. **03-2860WJR JWJ**

COMPLAINT FOR DAMAGES,  
INJUNCTIVE AND DECLARATORY  
RELIEF FOR:

1. Extra-Judicial Killing
2. Torture
3. Crimes Against Humanity
4. Cruel, Inhuman and Degrading Treatment
5. War Crimes
6. Wrongful Death
7. Intentional Infliction of Emotional Distress
8. Negligent Infliction of Emotional Distress
9. Violation of Business & Professions Code, Sec. 17200

DEMAND FOR JURY TRIAL

ENTERED ON ICMS

APR 24 2003

COMPLAINT

I. NATURE OF ACTION

1  
2  
3  
4 1. Plaintiff Luis Alberto Galvis Mujica ("Plaintiff") brings  
5 this case on behalf of himself for the damages he has suffered,  
6 including pain and suffering, as a result of the violent deaths of his  
7 mother, Tereza Mujica Hernandez; his sister, Edilma Leal Pacheco; and  
8 his cousin, Johanny Hernandez Becerra. He also brings this case as  
9 representative of the estate of his mother, sister and cousin. He  
10 further brings this case on behalf of himself for the damages he has  
11 suffered due to his forced exile from his home and family.

12 2. Plaintiff's mother, sister and cousin were killed on  
13 December 13, 1998, when a cluster bomb was dropped upon their town of  
14 Santo Domingo, Colombia, by a helicopter operated by the Colombian Air  
15 Force ("CAF") -- an official branch of the Colombian military  
16 ("Military", "Colombian Armed Forces"). The CAF receives direct  
17 funding from Defendant Occidental Petroleum Corporation ("Occidental")  
18 in return for protecting Occidental's pipeline in Cano Limon and was  
19 acting in the furtherance of the private interests of Occidental in  
20 carrying out this bombing. The CAF received the coordinates for this  
21 bombing directly from Defendant AirScan, Inc. ("AirScan") which was  
22 working in its capacity as a security contractor and agent of  
23 Defendant Occidental. This bombing, moreover, was planned by the CAF  
24 and Defendants in room "G" of Defendant Occidental's complex in Cano  
25 Limon, Colombia and Occidental and AirScan provided support and  
26 direction for the attack.

27 3. Defendant AirScan provided aerial surveillance for this  
28 mission during the bombing, helped the CAF to identify the target for

1 bombing and chose the places for Colombian military troop  
2 disembarkment during the mission. They did so through the efforts of  
3 three employees who, at the time of the attack, were flying a  
4 Skymaster airplane supplied by defendant Occidental at the time of the  
5 attack. Accompanying the three Airscan pilots in the Skymaster plane  
6 during the bombing raid was a Colombian military officer who at the  
7 time was serving as a CAF liaison to Occidental.

8 4. The killings of Plaintiff's mother, sister and niece  
9 constitute extra-judicial killings in contravention of the law of  
10 nations, and as such, are actionable under the Alien Tort Claims Act  
11 ("ATCA"), 28 U.S.C., Section 1350 and the Torture Victims Protection  
12 Act ("TVPA"), 28 U.S.C., Section 1350, Note, or, in the alternative,  
13 resulted from military actions which failed to take sufficient care to  
14 avoid reasonably foreseeable civilian casualties, and, as such, are  
15 actionable under the Alien Tort Claims Act, 28 U.S.C. Section 1350.  
16 Defendants' actions also violated international humanitarian law and  
17 constituted war crimes and crimes against humanity actionable under  
18 the common law of the United States. The Plaintiff brings this action  
19 against Defendants Occidental and Airscan because they were involved  
20 in a conspiracy with the CAF to carry out these unlawful attacks and  
21 because these defendants provided practical support and encouragement  
22 to the CAF in carrying out this massacre. This assistance had a  
23 substantial effect on the perpetration of the massacre. The Plaintiff  
24 also brings this case against Defendants under California tort law and  
25 California's Business & Professions Code, Section 17200.

## 26 27 II. PARTIES

28 5. Plaintiff is a citizen of the Republic of Colombia, South

1 America, and his permanent domicile is in that country. Plaintiff and  
2 his family are from the hamlet of Santo Domingo, a very small  
3 community of several homes located in the Department of Arauca.  
4 Plaintiff sues on behalf of himself for the damages he suffered as a  
5 result of the killings of his mother, Tereza Mujica Hernandez; his  
6 sister, Edilma Leal Pacheco; and his cousin, Johanny Hernandez Becerra  
7 and for his own damages suffered as a result of the bombing and  
8 sacking of his town and family home and the other acts carried out by  
9 Defendants with CAF, as alleged herein. Because of these acts  
10 plaintiff has been forced into involuntary exile from his country and  
11 has been separated from his family. Plaintiff also brings this case  
12 on behalf of his mother and sister and cousin, as the representative  
13 of their estates, for the damages they suffered as a result of the  
14 Defendants' acts alleged herein.

15 6. Defendant Occidental is a corporation doing business within  
16 the United States and with its principal headquarters located at 10889  
17 Wilshire Boulevard, Los Angeles, California 90024-4201. Occidental  
18 also does business in Cano Limon, Colombia where it operates a large  
19 oil production facility and pipeline.

20 7. Defendant AirScan is a corporation doing business within the  
21 United States with its principal headquarters at 3505 Murrell Road,  
22 Rockledge, Florida 32955. At the time of the events alleged in this  
23 complaint, Defendant Airscan was a contractor for Defendant  
24 Occidental, providing security for Occidental's Cano Limon oil  
25 production facility and pipeline in Colombia, South America, and later  
26 became a de facto agent of Occidental while under formal contract to  
27 CAF.



1 Plaintiff, and there is complete diversity of citizenship between  
2 Plaintiff and all Defendants.

3 12. Venue properly lies in this Court pursuant to 28 U.S.C.  
4 Section 1391 (c) because Defendant Occidental does business and  
5 maintains its headquarters in the State of California and within the  
6 jurisdiction of this Court. The contract between Defendant Occidental  
7 and Defendant Airscan was negotiated and executed in the State of  
8 California.

9  
10 **IV. FACTS**

11 13. Since 1986, Defendant Occidental has operated an oil  
12 production facility and pipeline in Cano Limon, Colombia. The  
13 operation is a joint venture with the Colombian Government. Defendant  
14 Occidental has legal and effective control of the operation. Since  
15 1997, Defendant Occidental has employed Defendant AirScan as a formal  
16 or de facto contractor to provide security for these Colombian  
17 operations. During all times relevant herein, Occidental paid AirScan  
18 directly for its security services, or has channeled payment to  
19 AirScan through the Colombian Defense Ministry. Occidental has  
20 claimed it employed AirScan to protect its operations from attacks by  
21 left-wing insurgents. To this same end, Occidental has also worked  
22 closely with and provided material assistance, including tens of  
23 millions of dollars of financial assistance, to the Colombian Armed  
24 Forces.

25 14. Defendants Occidental and AirScan knew that for years  
26 preceding the events described in this complaint, there were  
27 widespread human rights violations committed in Arauca by the  
28 Colombian military committed either directly by the military or

1 indirectly through right-wing paramilitary groups working with the  
2 government's cooperation. For a number of years prior to the December  
3 1998 attack on Santo Domingo, the Colombian military, directly or  
4 indirectly, participated in numerous massacres of civilians, the  
5 disappearances and extra-judicial killings of local members of  
6 peasant, labor and indigenous groups -- including members of the U'wa  
7 tribe whose land Occidental was attempting to seize for oil-drilling  
8 purposes -- and the forced displacement of hundreds of people from  
9 their homes and land. Prior to and leading up to the December 1998  
10 massacre in Santa Domingo, Defendants Occidental and Airscan were  
11 aware of the Colombian military's participation in such human rights  
12 abuses. Notwithstanding this knowledge, defendants continued to  
13 provide the same military forces with financial and other material  
14 assistance and continued to plan joint actions with it relating to  
15 defendants' commercial activities.

16 15. In the course of its security work for Occidental,  
17 Defendant AirScan gathered strategic information which was used by the  
18 Colombian Air Force to carry out the December 1998 bombing raid of  
19 Santo Domingo. AirScan flew numerous surveillance operations  
20 throughout Arauca for the purpose of tracking guerilla movements for  
21 the military and for Occidental.

22 16. In 1998, Defendant Occidental knowingly provided an office  
23 at its Cano Limon site to be used as the staging ground for the  
24 bombing raid of Santo Domingo. At this office, namely Room "G,"  
25 officials of Defendant AirScan and the Colombian military met on  
26 several occasions during 1998, including the morning of December 13,  
27 to plan the raid on Santo Domingo. Both AirScan and the military made  
28 these plans in the course of their security work for Defendant



1 Occidental and were acting as agents of Defendant Occidental at the  
2 time.

3 17. On December 13, 1998, Defendant AirScan and the Colombian  
4 Air Force, in their role as security contractors for Defendant  
5 Occidental, jointly participated in the raid upon Santo Domingo. The  
6 Colombian Air Force, in carrying out this raid, was acting in its role  
7 of providing security. During this raid, Defendant AirScan utilized a  
8 Skymaster plane bearing the markings of the Colombian air force and  
9 funded by Defendant Occidental for many years. Defendant AirScan  
10 manned this plane with three of its employee pilots from the United  
11 States as well as a Colombian military officer who at the time was  
12 serving as air force liaison to Defendant Occidental. Using  
13 intelligence it gathered in the course of providing security for  
14 Occidental and utilizing the infra-red sensors and high-resolution  
15 cameras of Occidental's Skymaster plane, the three AirScan pilots, Joe  
16 Orta, Charlie Denny and Dan MacClintock, directed the Colombian Air  
17 Force helicopters in the raid upon Santo Domingo. It was the AirScan  
18 pilots who chose the targets for the raid, pointed out vulnerable  
19 areas and chose the places for Colombian troop disembarkment. This  
20 AirScan-led raid consisted of strafing with machine-gun fire, air-to-  
21 surface rockets and including the dropping of at least one cluster  
22 bomb, which then exploded into multiple fragments, on the small hamlet  
23 of Santo Domingo.

24 18. Residents of Santa Domingo witnessed several low-flying  
25 helicopters flying overhead and made their best efforts to communicate  
26 with the pilots that they were in fact civilians. Thereafter, several  
27 witnesses saw an object drop from one of the helicopters as it flew  
28 overhead followed by explosions.



1        19. Subsequently, a cluster bomb exploded in Santo Domingo,  
2        destroying homes and directly resulting in the deaths of 17 innocent  
3        and unarmed civilians, including 6 children, and wounding 25 more.

4        20. Among those killed by the cluster bombs were Plaintiff's  
5        mother, Tereza Mujica Hernandez; his sister, Edilma Leal Pacheco; and  
6        his cousin, Johanny Hernandez Becerra. Plaintiff's father was also  
7        seriously injured in the raid. Meanwhile, residents of Santa Domingo  
8        were impeded from escaping by one or more CAF helicopters which  
9        strafed a truck attempting to carry away the dead and to take the  
10       wounded to medical care. Later, within a day or two, Colombian  
11       military troops entered the town, as directed by AirScan, and blocked  
12       all exit from the town, including vehicles attempting to remove the  
13       injured to hospitals. These same troops sacked the town, ransacking  
14       homes and stealing property from the residents and their homes.  
15       Plaintiff's home was one of those ransacked by the troops.

16       21. While the stated purpose of the raid was to protect  
17       Defendant Occidental's pipeline from sabotage by left-wing insurgents,  
18       no insurgents were killed by the cluster bomb dropped on the hamlet of  
19       Santo Domingo and the raid was conducted in an indiscriminate manner  
20       without the slightest regard for the civilians living there. No  
21       insurgents were known to live in Santo Domingo at the time of this  
22       massacre and no insurgent forces were present in Santo Domingo at the  
23       time of the raid. Rather, any combatants were at least 1 to 2  
24       kilometers outside of Santo Domingo. Defendants were very aware of  
25       this fact at the time of the raid, but carried it out nonetheless.

26       22. The December 13, 1998 raid upon Santo Domingo, conducted as  
27       it was by Defendants with logistical and other support provided by the  
28       Colombian Armed Forces, was carried out under the color of foreign

1 official authority.

2 23. Plaintiff was about 800 to 1000 meters out of town at the  
3 time the bombing of Santo Domingo began on December 13. At about 9:45  
4 a.m. on that morning, he could see a CAF helicopter flying around the  
5 vicinity of Santo Domingo, he then heard an explosion and shortly  
6 thereafter saw smoke coming from the vicinity of the helicopter.  
7 Believing that the helicopter had bombed Santo Domingo, Plaintiff  
8 hurried back to Santo Domingo to see if his family was safe. On his  
9 way into town, he met people who told him that they had been bombed  
10 and that his father had been wounded. Before he made it into town, a  
11 CAF helicopter began to fire upon him. He feared for his life and  
12 safety and took cover. He was unable to enter into Santo Domingo and  
13 fled into the neighboring town of Cano Verde.

14 24. On December 14, Plaintiff learned by phone that his mother  
15 had been killed in the raid. That afternoon, he returned to Santo  
16 Domingo and found his mother, sister, cousin and some friends had been  
17 killed in the attack. Later that day Plaintiff left town again  
18 because of his fear that the military would return to kill more  
19 innocent civilians.

20 25. When Plaintiff returned to Santo Domingo again, he found  
21 that his family home, from which they also operated a small grocery  
22 store, had been ransacked. Grain and merchandise had been stolen from  
23 his home and the house was in a shambles. Plaintiff found bags inside  
24 the house upon which was written, "For The Exclusive Use Of The  
25 Colombian Armed Forces."

26 26. As a result of these events, Plaintiff suffered serious  
27 emotional trauma and was put into a state of fear for his life and the  
28 lives of his remaining family members.

1        27. As a foreseeable consequence of the Defendants' actions as  
2 described herein, Plaintiff was forced to go into exile.  
3 Specifically, Plaintiff received death threats from the Colombian  
4 Armed Forces who apprehended and interrogated him after the bombing  
5 raid in an attempt to keep him quiet about the above-described events.  
6 Plaintiff's close friend, Angel Riveros, another witness to these  
7 events, was killed inside of Plaintiff's home in Colombia in January  
8 2002 in retaliation for his giving testimony about these events.  
9 Plaintiff cannot return to Colombia safely to his wife and child and  
10 other family members as a result of the events of December 1998 and  
11 their continuing consequences, consequences that were known or should  
12 have been known to defendants. Plaintiff also continues to suffer  
13 emotional trauma from the direct consequences of the raid upon his  
14 town, home and family and from the killing of his family members.

15        28. For the reasons described above, Plaintiff has been unable  
16 to pursue available and effective legal action in Colombia against  
17 Defendants to remedy the injuries he suffered as a direct consequence  
18 of their actions as described herein.

19        29. Defendant Occidental is directly and vicariously liable for  
20 all of the aforementioned tortious actions committed by AirScan and  
21 the CAF as these actions were carried out in furtherance of  
22 Occidental's business interests and activities and with the advance  
23 knowledge, acquiescence and subsequent ratification of Occidental.  
24 Moreover, Defendant Occidental practically assisted and encouraged all  
25 of CAF's tortious conduct, and such assistance and encouragement had a  
26 substantial effect on the perpetration of those acts. Further, all of  
27 the wrongful acts alleged herein were committed by individuals  
28 retained as employees or agents of Occidental, making Occidental

1 directly or vicariously liable for all of the wrongful acts.

2 30. Defendant AirScan, in turn, is directly and vicariously  
3 liable for all of the aforementioned tortious actions committed by the  
4 CAF as these actions were carried out in furtherance of its business  
5 interests and activities and with the advance knowledge, acquiescence  
6 and subsequent ratification of AirScan. Moreover, Defendant Airscan  
7 practically assisted and encouraged all of CAF's tortious conduct, and  
8 such assistance and encouragement had a substantial effect on the  
9 perpetration of those acts. Further, all of the wrongful acts alleged  
10 herein were committed by individuals retained as employees or agents  
11 of AirScan, making AirScan directly or vicariously liable for all of  
12 the wrongful acts.

13 31. At all times herein material, Occidental, AirScan and the  
14 CAF were joint venturers and co-conspirators and were working in  
15 concert with each other and acting within the course and scope of such  
16 joint venture and conspiracy. To the extent that said conduct was  
17 perpetrated by either one of the Defendants, or by the CAF, the  
18 remaining Defendant or Defendants confirmed and ratified the same. As  
19 a result, the Defendants are jointly and severably liable for the  
20 unlawful actions alleged herein and each Defendant is vicariously  
21 liable for the misconduct of the other Defendant and the CAF.

## 22 23 V. DEFENDANTS' VIOLATIONS OF LAW

24 32. Defendants' actions violate, and Plaintiff's causes of  
25 action arise from, the following laws, agreements, conventions,  
26 resolutions and treaties, which constitute specific examples of the  
27 applicable law of nations, customary international law and state law:

28 (a) Alien Tort Claims Act, 28 U.S.C. § 1350;

- 1 (b) Torture Victim Protection Act, 28 U.S.C. § 1350;
- 2 (c) Common law of the United States of America;
- 3 (d) Customary International Law;
- 4 (e) United Nations Charter, 59 Stat. 1031, 3 Bevans 1153 (1945);
- 5 (f) Universal Declaration of Human Rights, G.A. Res. 217A(iii),
- 6 U.N. Doc. A/810 (1948);
- 7 (g) International Covenant on Civil and Political Rights, G.A.
- 8 Res. 2220A(xxi), 21 U.N. Doc., GAOR Supp. (No. 16) at 52,
- 9 U.N. Doc. A/6316 (1966);
- 10 (h) Convention Against Torture and Other Cruel, Inhuman or
- 11 Degrading Treatment or Punishment, G.A. res. 39/46, 39 U.N.
- 12 Doc., GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51
- 13 (1984) (ratified 10/28/98);
- 14 (i) Declaration on the Protection of All Persons From Being
- 15 Subjected to Torture and Other Cruel, Inhuman or Degrading
- 16 Treatment or Punishment, G.A. Res. 3452, 30 U.N. Doc., GAOR
- 17 Supp. (No. 34) at 91, U.N. Doc. A/10034 (1976);
- 18 (j) Vienna Declaration and Programme of Action (World Conference
- 19 on Human Rights, 1993);
- 20 (k) Common Article 3 of the 1949 Geneva Conventions, Articles 51
- 21 and 57 of the 1977 Geneva Protocol I or, in the alternative,
- 22 Article 13 of the 1977 Geneva Protocol II;
- 23 (l) The Convention on the Rights of the Child, G.A. Res. 44/25,
- 24 annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49
- 25 (1989); and
- 26 (m) Statutes and common law of the State of California,
- 27 including but not limited to, wrongful death, negligence,
- 28 and recklessness.

VI. CLAIM FOR RELIEF

First Cause of Action  
Extrajudicial Killing and Violation of the Laws of War  
*By Plaintiff Against All Defendants*

33. Plaintiff incorporates by reference paragraphs 1 through 32 of this Complaint as is set forth herein.

34. Defendants engaged in acts of intentionally and tortiously causing the deaths of residents in the hamlet of Santo Domingo, including Plaintiff's mother, sister and cousin. Specifically, as is alleged above, Defendants, operating under color of law, conspired and acted jointly with the CAF to carry out a bombing raid upon the town of Santo Domingo, thereby, and foreseeably, killing these members of Plaintiff's family. Defendants' employees and/or agents and/or accomplices, including the CAF and pilots Joe Orta, Charlie Denny and Dan MacClintock, acting in the furtherance of Occidental's business interests, killed Plaintiff's mother, sister and cousin. In addition, Defendants provided significant financial support, supplies, intelligence, logistical support and other substantial assistance that contributed to the ability of the Colombian Air Force to carry out its role in the conspiracy to killing Plaintiff's mother Tereza Mujica Hernandez; his sister, Edilma Leal Pacheco; and his cousin, Johanny Hernandez Becerra. These acts violate the law of nations, customary international law, including, but not limited to, the specific laws, agreements, conventions, resolutions and treaties listed in paragraph 34, *supra*. The acts described herein are actionable under the ATCA and the TVPA, and, if such a showing is required, were done jointly with the official armed forces of the Republic of Colombia.

35. Even if defendants did not intentionally target Plaintiff and his family members, defendants deliberately perpetrated an

1 indiscriminate attack, without sufficient precautions, which they  
2 should have expected to cause loss of civilian life, injury to  
3 civilians and damage to civilian objects, and a combination thereof,  
4 which would be excessive in relation to the concrete and direct  
5 military advantage anticipated. If the war in Colombia is an  
6 international war, defendants thereby violated Articles 51 and 57 of  
7 the 1977 Geneva Protocol I and the customary international law of war.  
8 If the war in Colombia is a non-international war, defendants thereby  
9 violated Article 13 of the 1977 Geneva Protocol II and the customary  
10 international law of war.

11 36. Defendants' conduct in violation of the law of nations,  
12 customary international law, including, but not limited to, the  
13 specific laws, agreements, conventions, resolutions and treaties  
14 listed in paragraph 32, *supra*, resulted in the deaths of Plaintiff's  
15 family members. Defendants are jointly and severally liable for these  
16 violations of the law of nations, customary international law,  
17 including, but not limited to, the specific laws, agreements,  
18 conventions, resolutions and treaties listed in paragraph 32, *supra*.  
19 Defendants are also vicariously liable for any violations of their  
20 employees or agents of the law of nations, customary international  
21 law, including, but not limited to, the specific laws, agreements,  
22 conventions, resolutions and treaties listed in paragraph 32 above.

23 37. Plaintiff seeks compensatory and punitive damages, in  
24 amounts to be ascertained at trial, for the losses and suffering he  
25 endured as a result of the killing of his mother, sister and cousin.  
26 Plaintiff, as the representative of the estates of his mother, sister  
27 and cousin, also seeks compensatory and punitive damages, amounts to  
28 be ascertained at trial, for the losses and suffering endured by his



1 mother, sister and cousin themselves as a result of the wrongful  
 2 actions of the Defendants herein. The Plaintiff further seek  
 3 equitable relief to prevent further human rights violations.

## 4 5 **Second Cause of Action**

### 6 **Torture**

#### 7 ***By Plaintiff Against All Defendants***

8 38. Plaintiff incorporates by reference paragraphs 1 through 37  
 9 of this Complaint as is set forth herein.

10 39. The acts described herein placed Plaintiff himself, and his  
 11 mother, sister and cousin, in great fear for their lives and caused  
 12 them to suffer severe physical and mental pain and suffering.  
 13 Plaintiff has been subjected to acute and continuing emotional and  
 14 physical trauma as a result of the killing of a significant portion of  
 15 his family and by his being forced, against his will and as a  
 16 proximate cause of the actions of the Defendants detailed herein, into  
 17 exile from his home, town, country and wife and child. The severe  
 18 suffering and exile of Plaintiff was a foreseeable and intended  
 19 consequence of Defendants' actions described herein. Defendants acted  
 20 with knowing disregard for the life and well-being of the Santo  
 21 Domingo residents, including Plaintiff and his family. The acts of  
 22 Defendants amounted to the torture of Plaintiff, his mother, sister  
 23 and cousin and violate the law of nations, customary international  
 24 law, including, but not limited to, the specific laws, agreements,  
 25 conventions, resolutions and treaties listed in paragraph 32, above.

26 40. The acts described herein were inflicted deliberately and  
 27 intentionally for purposes which include, among others, punishing the  
 28 victim or third persons, and constitute torture in violation of the  
 laws of nations as described above in paragraph 32 and are therefore

1 actionable under both the ATCA and the TVPA.

3 **Third Cause of Action**

4 **Crimes Against Humanity**  
5 ***By Plaintiff Against All Defendants***

6 41. Plaintiff incorporates by reference paragraphs 1 through 40  
7 of this Complaint as is set forth herein.

8 42. The attack upon the hamlet of Santo Domingo; the killing of  
9 civilians, including Plaintiff's family members, through the use anti-  
10 personnel cluster bombs which destroy and kill persons without regard  
11 to whether they are armed or not; and the forced displacement of  
12 civilians, such as Plaintiff himself, were neither random nor  
13 occasional but widespread and systematic. These acts occurred under  
14 the direction, encouragement and acquiescence of Defendants.

15 43. The acts described herein constitute crimes against  
16 humanity, in violation of the laws, agreements, conventions,  
17 resolutions and treaties described in paragraph 32, above, and are  
18 therefore actionable under the ATCA and the TVPA. Customary  
19 international law prohibits inhumane acts of a very serious nature  
20 such as willful killing, forced displacement and other inhumane acts  
21 committed as part of a widespread or systematic attack against any  
22 civilian population. Leaders, organizers, instigators and  
23 accomplices participating in the formulation of these acts, such as  
24 Defendants here, are responsible for all acts performed by any person  
25 in execution of such plan.

26 ///

27 ///

28 ///

1 Fourth Cause of Action

2 **Cruel, Inhuman and Degrading Treatment**  
3 **By Plaintiff Against All Defendants**

4 44. Plaintiff incorporates by reference paragraphs 1 through 43  
5 of this Complaint as is set forth herein.

6 45. The acts described herein had the intent and the effect of  
7 grossly humiliating and debasing Plaintiff and his mother, sister and  
8 cousin, inciting fear and anguish and breaking their will and physical  
9 and moral resistance.

10 46. Defendants' intentional acts described herein forced  
11 Plaintiff, against his will and under fear of harm, to flee his home,  
12 his family, his town and his country.

13 47. Plaintiff and his mother, sister and cousin were placed in  
14 great fear for their lives and forced to suffer severe physical and  
15 psychological abuse and agony. The acts described herein constitute  
16 cruel, inhuman and degrading treatment in violation of the laws,  
17 agreements, conventions, resolutions and treaties described in  
18 paragraph 32, above, and are therefore actionable under both the ATCA  
19 and the TVPA.

20 Fifth Cause of Action

21 **War Crimes**  
22 **By Plaintiff Against All Defendants**

23 48. Plaintiff incorporates by reference paragraphs 1 through 47  
24 of this Complaint as set forth herein.

25 49. Colombia has been engaged in a civil war with ongoing and  
26 active hostilities, including during the time of this bombing.  
27 Defendants, through their actions directing and conspiring with the  
28 Colombian military, their actions in support of the military, and also  
in their actions carried out through the military, are directly and

1 vicariously liable for war crimes perpetrated with their participation  
2 and ratification.

3 50. Plaintiff, his mother, sister and cousin were civilians that  
4 took no part in the hostilities. Defendants made Plaintiffs the  
5 object of attack and threats in violation of the laws of war. The  
6 acts described herein constitute violence to life and person,  
7 including extrajudicial killing, torture and mutilation. They also  
8 contain incidents of outrages upon human dignity, forced movement,  
9 pillage and denial of medical treatment. These acts occurred at the  
10 encouragement, direction, participation and acquiescence of Defendant.

11 51. The crimes described herein are war crimes in violation of  
12 the laws described in paragraph 32, above, specifically Common Article  
13 3 of the Geneva Conventions and the Protocols to those Conventions,  
14 and are therefore actionable under the ATCA and TVPA. Leaders,  
15 organizers, instigators and accomplices participating in the  
16 formulation of these acts, such as Defendants here, are responsible  
17 for all acts performed by any person in execution of such plan.

18  
19 **Wrongful Death**  
20 ***By Plaintiff Against All Defendants***

21 52. Plaintiff incorporates by reference paragraphs 1 through 51  
22 of this Complaint as is set forth herein.

23 53. Defendants acted in concert to commit, or Defendants'  
24 employees or agents committed, acts that constitute wrongful death  
25 under the laws of the State of California and that caused the deaths  
26 of Plaintiff's mother Tereza Mujica Hernandez; his sister, Edilma Leal  
27 Pacheco; and his cousin, Johanny Hernandez Becerra. Plaintiff,  
28 relative and representative of the estates of these deceased, seek  
damages herein for pecuniary loss resulting from loss of society,

1 comfort, attention, services and support and for the losses suffered  
2 by his mother, sister and cousin themselves.

3 54. Defendants' actions were a direct and substantial cause of  
4 the deaths of Plaintiff's mother Tereza Mujica Hernandez; his sister,  
5 Edilma Leal Pacheco; and his cousin, Johanny Hernandez Becerra.  
6 Defendants failed to use due care to protect them from injury and  
7 harm, thereby proximately causing their wrongful deaths. Plaintiff is  
8 entitled to recover compensatory and punitive damages in amounts to be  
9 ascertained at trial.

10  
11 **Sixth Cause of Action**

12 **Intentional Infliction of Emotional Distress**  
13 ***By Plaintiff Against All Defendants***

14 55. Plaintiff incorporates by reference paragraphs 1 through 54  
15 of this Complaint as is set forth herein.

16 56. The allegations described herein constitute outrageous  
17 conduct against Plaintiff, his mother, sister and cousin, and are  
18 without privilege.

19 57. Defendants intended to cause Plaintiff, his mother, sister  
20 and cousin to suffer emotional distress, or, in the alternative,  
21 Defendants engaged in the conduct with reckless disregard of the  
22 probability of causing these individuals to suffer emotional distress.

23 58. Plaintiff and his mother, sister and cousin suffered severe  
24 emotional distress and the outrageous conduct of the Defendants was a  
25 cause of the emotional distress suffered by them.

26 59. Defendants' outrageous conduct constitutes the intentional  
27 infliction of emotional distress and is actionable under the laws of  
28 California, the United States and Colombia.

///  
29

1                                    Seventh Cause of Action

2                                    Negligent Infliction of Emotional Distress  
3                                    By Plaintiff Against All Defendants

4            60. Plaintiff incorporates by reference paragraphs 1 through 59  
5 of this Complaint as is set forth herein.

6            61. At all times relevant herein, Defendants owed Plaintiff and  
7 his family a duty to act with reasonable care and injury to Plaintiff  
8 and his family was reasonably foreseeable.

9            62. At all relevant times, Defendants knew, or reasonably should  
10 have known, that the conduct described herein would and did  
11 proximately result in physical and emotional distress to Plaintiff and  
12 his family.

13           63. Despite said knowledge, power and duty, Defendants breached  
14 their duty to Plaintiff and his family, and thereby negligently failed  
15 to act so as to stop engaging in the conduct described herein and to  
16 prevent or to prohibit such conduct or to otherwise protect Plaintiff  
17 and his family. To the extent that said negligent conduct was  
18 perpetrated by one Defendant, the remaining Defendant confirmed and  
19 ratified said conduct with the knowledge that Plaintiff's and his  
20 family's emotional and physical distress would thereby increase and  
21 with a wanton reckless disregard of the deleterious consequences to  
22 Plaintiff and his family.

23           64. Plaintiff was a bystander and immediately observed the  
24 circumstances involving the death on his family members.

25           65. As a direct and legal result of Defendants' wrongful acts,  
26 Plaintiff has suffered and will continue to suffer significant  
27 physical injury, pain and suffering and extreme and severe mental  
28 anguish and emotional distress.

          66. Defendants' conduct constitutes the negligent infliction of

1 emotional distress and is actionable under the laws of California, the  
2 United States and Colombia.

3  
4 **Eighth Cause of Action**

5 **Violation of Business & Professions Code, Sec. 17200**  
6 ***By Plaintiff Against All Defendants***

7 67. Plaintiff incorporates by reference paragraphs 1 through 66  
8 of this Complaint as is set forth herein.

9 68. Plaintiff brings this cause of action on behalf of himself  
10 and on behalf of the general public, pursuant to Business and  
11 Professions Code, Sec. 17204. The conduct of Defendants as alleged  
12 herein has been and continues to be deleterious to Plaintiff and the  
13 general public, and Plaintiff is seeking to enforce important rights  
14 affecting the public interest within the meaning of Code of Civil  
15 Procedure, Sec. 1021.5.

16 69. Defendants' violent business practices as alleged herein  
17 constitute ongoing and continuous unfair business practices within the  
18 meaning of Business and Professions Code, Sec. 17200. Such practices  
19 include, but are not limited to, the killing, torture, intimidation  
20 and forced displacement of civilians in the vicinity of Occidental'  
21 oil-drilling operations and pipeline in Colombia. Members of the  
22 public have been in the past and will in the future likely be damaged  
23 by these practices.

24 70. The conduct as alleged herein constitutes a violation of  
25 Colombian laws relating to criminal conduct, as well as obligations  
26 under customary international law. Defendants' use of the Colombian  
27 Armed Forces to protect and further their business interests through  
28 violent and indiscriminate means creates an unfair business advantage  
over competitors within California and the United States.



1        71. The acts described herein constitute unfair business  
2 practices in violation of California Business & Professions Code,  
3 Sect. 17200.

4        72. The conduct as described herein constitutes a violation of  
5 California laws relating to criminal statutes as well as obligations  
6 under customary international law. The use of such unfair and illegal  
7 forced law creates an unfair business advantage over competitors  
8 within California and the United States.

9        73. Plaintiff seeks injunctive relief, disgorgement of all  
10 profits resulting from these unfair business practices, restitution  
11 and other appropriate relief on behalf of himself and members of the  
12 general public as provided in Business and Professions Code, Sec.  
13 17203.

14                                **VII. DEMAND FOR JURY TRIAL**

15        74. Plaintiff demands a trial by jury on all issues so triable.

16                                **VIII. PRAYER FOR RELIEF**

17        WHEREFORE, Plaintiff respectfully requests the Court to:

- 18        (a) enter judgment in favor of Plaintiff on all counts of the  
19                Complaint;  
20        (b) declare that Defendants have violated Plaintiff's human  
21                rights and the laws of the State of California and the  
22                United States, as set forth herein;  
23        (c) award Plaintiff compensatory and punitive damages;  
24        (d) grant Plaintiff equitable relief, permanently enjoining  
25                Defendants from further engaging in or aiding or abetting  
26                human rights abuses against Plaintiff and other residents of  
27                Santo Domingo;  
28        (e) award Plaintiff the costs of suit including reasonable

1 attorneys' fees;

2 (f) award Plaintiff such other and further relief as the Court  
3 deems just under the circumstances.

4  
5 Dated: April 23, 2003

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23  
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25 Paul L. Hoffman  
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27  
28

DEMAND FOR JURY

Plaintiff hereby demand trial by jury on all issues.

Dated: April 23, 2003

Schonbrun DeSimone Seplow  
Harris & Hoffman LLP

By: 

Paul L. Hoffman  
Attorney for Plaintiffs

CLERK